

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
YEHUDA KATZ,  
Individually and on behalf of a class, :

Plaintiff, :

v. :

ABP CORPORATION and DOES 1-10, :

Defendants. :  
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Case No. 12 Civ. 4173 (ENV) (RER)

**DEFENDANT ABP CORPORATION'S ANSWER  
TO THE FIRST AMENDED COMPLAINT**

Defendant ABP Corporation ("ABP"), as and for its Answer to the First Amended Complaint ("FAC") of plaintiff Yehuda Katz ("Plaintiff"), alleges as follows:

**RESPONSE TO ALLEGATIONS OF THE FIRST AMENDED COMPLAINT**

1. ABP denies the allegations contained in paragraph 1 of the FAC, except admits that Plaintiff purports to bring this action as a class action claiming a violation of the Fair and Accurate Credit Transactions Act amendment to the Fair Credit Reporting Act.

2. ABP denies the allegations contained in paragraph 2 of the FAC, except admits that Plaintiff purports to quote from 15 U.S.C. § 1681c(g) and refers to the statute for its full and complete terms.

3. ABP avers that the allegations contained in paragraph 3 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 3.

4. ABP avers that the allegations contained in the first sentence of paragraph 4 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in the first sentence of paragraph 4. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph 4 of the FAC, and on that basis denies those allegations.

5. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the FAC, and on that basis denies those allegations.

6. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the FAC, and on that basis denies those allegations.

7. ABP avers that the allegations contained in paragraph 7 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 7.

8. ABP avers that the allegations contained in paragraph 8 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 8.

9. ABP avers that the allegations contained in the first sentence of paragraph 9 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in the first sentence of paragraph 9. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph 9 of the FAC, and on that basis denies those allegations.

10. ABP denies the allegations contained in paragraph 10 of the FAC.

11. ABP denies the allegations contained in paragraph 11 of the FAC, except admits that Plaintiff purports to seek relief in the forms set forth in paragraph 11 of the FAC and denies that Plaintiff is entitled to any of the relief sought.

12. ABP avers that the allegations contained in paragraph 12 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 12.

13. ABP avers that the allegations contained in paragraph 13 of the FAC state legal conclusions to which no response is required, except admits that ABP conducts business within the Eastern District of New York. To the extent a response is required, ABP denies any other factual allegations contained in paragraph 13.

14. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the FAC, and on that basis denies those allegations.

15. ABP admits the allegations contained in paragraph 15 of the FAC.

16. ABP avers that the allegations contained in paragraph 16 of the FAC state legal conclusions to which no response is required, except admits that ABP accepts credit cards or debit cards for the transaction of business. To the extent a response is required, ABP denies any remaining factual allegations contained in paragraph 16.

17. ABP denies the allegations contained in paragraph 17 of the FAC.

18. ABP avers that the allegations contained in paragraph 18 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 18.

19. ABP admits that Plaintiff purports to quote from 15 U.S.C. § 1681c(g) and refers to the statute for its full and complete terms.

20. With respect to ABP itself, ABP admits the allegations contained in paragraph 20 of the FAC. ABP denies any allegations with respect to any other “Defendants,” as there are no other Defendants.

21. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the FAC, and on that basis denies those allegations.

22. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the FAC, and on that basis denies those allegations.

23. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the FAC, and on that basis denies those allegations.

24. ABP avers that the allegations contained in paragraph 24 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 24 of the FAC, and on that basis denies those allegations.

25. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the FAC, and on that basis denies those allegations.

26. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 26 of the FAC, and on that basis denies those allegations. ABP denies the allegations contained in the second and third sentences of paragraph 26 of the FAC.

27. ABP avers that the allegations contained in paragraph 27 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 27.

28. ABP avers that the allegations contained in paragraph 28 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 28.

29. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the FAC, and on that basis denies those allegations. To the extent the allegations of paragraph 29 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms.

30. ABP avers that the allegations contained in paragraph 30 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 30. ABP denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 30 of the FAC, and on that basis denies those allegations. ABP admits that Plaintiff purports to quote from a statute and refers to the statute for its full and complete terms.

31. With respect to ABP itself, ABP admits the allegations contained in paragraph 31 of the FAC. ABP denies any allegations with respect to any other “Defendants,” as there are no other Defendants.

32. To the extent the allegations of paragraph 32 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms. ABP denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 32 of the FAC, and on that basis denies those allegations.

33. To the extent the allegations of paragraph 33 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms. ABP denies

knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 33 of the FAC, and on that basis denies those allegations.

34. To the extent the allegations of paragraph 34 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms. ABP denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 34 of the FAC, and on that basis denies those allegations.

35. To the extent the allegations of paragraph 35 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms. ABP denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 35 of the FAC, and on that basis denies those allegations.

36. To the extent the allegations of paragraph 36 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms. ABP denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 36 of the FAC, and on that basis denies those allegations.

37. To the extent the allegations of paragraph 37 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms. ABP denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 37 of the FAC, and on that basis denies those allegations.

38. To the extent the allegations of paragraph 38 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms. ABP denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 38 of the FAC, and on that basis denies those allegations.

39. To the extent the allegations of paragraph 39 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms. ABP denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 39 of the FAC, and on that basis denies those allegations.

40. To the extent the allegations of paragraph 40 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms. ABP denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 40 of the FAC, and on that basis denies those allegations.

41. With respect to ABP itself, ABP admits the allegations contained in paragraph 41 of the FAC. ABP denies any allegations with respect to any other “Defendants,” as there are no other Defendants.

42. To the extent the allegations of paragraph 42 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms. ABP denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 42 of the FAC, and on that basis denies those allegations.

43. ABP denies the allegations contained in paragraph 43 of the FAC.

44. To the extent the allegations of paragraph 44 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms. ABP denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 44 of the FAC, and on that basis denies those allegations.

45. To the extent the allegations of paragraph 45 of the FAC refer to documents, ABP respectfully refers to the referenced documents for their full and complete terms. ABP denies

knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 45 of the FAC, and on that basis denies those allegations.

46. ABP denies the allegations contained in paragraph 46 of the FAC.

47. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the FAC, and on that basis denies those allegations.

48. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the FAC, and on that basis denies those allegations.

49. ABP denies the allegations contained in paragraph 49 of the FAC.

50. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the FAC, and on that basis denies those allegations.

51. ABP denies the allegations contained in paragraph 51 of the FAC.

52. ABP denies the allegations contained in paragraph 52 of the FAC.

53. ABP denies the allegations contained in paragraph 53 of the FAC.

54. ABP admits that Plaintiff purports to quote from 15 U.S.C. § 1681n and refers to the statute for its full and complete terms.

55. ABP admits that Plaintiff purports to quote from 15 U.S.C. § 1681p and refers to the statute for its full and complete terms.

56. ABP denies the allegations contained in paragraph 56 of the FAC.

57. ABP denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the FAC, and on that basis denies those allegations.

58. ABP denies the allegations contained in paragraph 58 of the FAC.

59. ABP avers that the allegations contained in paragraph 59 of the FAC state legal conclusions to which no response is required, except admits that Plaintiff purports to bring this



action as a class action. To the extent a response is required, ABP denies any factual allegations contained in paragraph 59.

60. ABP avers that the allegations contained in paragraph 60 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 60. ABP denies the remaining allegations contained in paragraph 60 of the FAC, except admits that Plaintiff purports to bring this action as a class action and purports to define the members of a proposed class as set forth in paragraph 60 of the FAC.

61. ABP avers that the allegations contained in paragraph 61 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 61 of the FAC.

62. ABP denies the allegations contained in paragraph 62 of the FAC.

63. ABP denies the allegations contained in paragraph 63 of the FAC, except admits that Plaintiff purports to bring this action as a class action and that the putative class, as defined, includes more than 100 persons.

64. ABP avers that the allegations contained in paragraph 64 (including subparagraphs a, b, and c) of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 64 (including subparagraphs a, b, and c) of the FAC.

65. ABP avers that the allegations contained in paragraph 65 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 65 of the FAC.

66. ABP avers that the allegations contained in paragraph 66 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 66 of the FAC.

67. ABP avers that the allegations contained in paragraph 67 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 67 of the FAC, and on that basis denies those allegations.

68. ABP avers that the allegations contained in paragraph 68 of the FAC state legal conclusions to which no response is required. To the extent a response is required, ABP denies any factual allegations contained in paragraph 68 of the FAC.

#### **AS TO THE DEMAND FOR RELIEF**

ABP denies that Plaintiff is entitled to any of the relief sought in the Demand for Relief on page 14 of the FAC or any other relief.

#### **AFFIRMATIVE DEFENSES**

By alleging the matters set forth below, ABP does not allege or admit that it has the burden of proof and/or the burden of persuasion with respect to any of these matters. ABP reserves the right to amend or supplement the Affirmative Defenses based on information developed during discovery or investigation.

#### **FIRST AFFIRMATIVE DEFENSE**

The FAC fails, in whole or in part, to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff lacks standing or capacity to pursue the claims alleged in the FAC and lacks standing or capacity to sue for the alleged injuries.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Plaintiff has not suffered any actual injury.

**FOURTH AFFIRMATIVE DEFENSE**

Claims asserted in the FAC are barred, in whole or in part, by the doctrines of laches, waiver, estoppel and/or unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

Claims asserted in the FAC are barred, in whole or in part, by the applicable statute of limitations.

**SIXTH AFFIRMATIVE DEFENSE**

Any alleged violation by ABP of any requirement of the Fair and Accurate Credit Transactions Act amendment to the Fair Credit Reporting Act was not willful. ABP acted in good faith at all relevant times, and did not intentionally or recklessly violate the statute.

**SEVENTH AFFIRMATIVE DEFENSE**

The statutory damages sought in the FAC would violate ABP's rights to due process of law.

**EIGHTH AFFIRMATIVE DEFENSE**

The punitive damages sought in the FAC would violate ABP's rights to due process of law.

**NINTH AFFIRMATIVE DEFENSE**

ABP has not knowingly or intentionally waived any applicable affirmative defenses and reserves the right to assert and rely on such other applicable affirmative defenses as may become available by law, or pursuant to statute, or appear during the proceedings in this action.

**PRAYER FOR RELIEF**

WHEREFORE, ABP respectfully requests that Plaintiff's FAC be dismissed with prejudice, that judgment be entered in ABP's favor, and that ABP be awarded its attorneys' fees, costs, and expenses in this Action and such other and further relief that the Court deems just and proper.

Dated: July 5, 2013

**GREENBERG TRAURIG, LLP**

By: /s/ Stephen L. Saxl  
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